SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 234.

WILLIAM A. WRIGHT, Comptroller-General, Petitioner, *vs.* LOUISVILLE AND NASHVILLE RAILROAD COMPANY, AND ATLANTIC COAST LINE RAILROAD COMPANY, Respondents.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF KING & SPALDING FOR APPELLEES.

STATEMENT OF THE CASE.

This cause originates in a bill in equity filed by the railroad companies, respondents, against William A. Wright, the petitioner in certiorari, and the Georgia Railroad and Banking Company, a corporation created under the laws of Georgia, to enjoin the enforcement by said Wright, Comptroller-General of Georgia, and the payment by the Georgia Railroad and Banking Company, of an amount claimed as taxes, alleged to be due for the year 1900, on fifteen thousand (15,000) shares of capital stock of the Western Railway of Alabama, a corporation created under the laws of the State of Alabama. (Transcript, pp. 1–7.)

The case was tried upon the bill, the answer of the defendant, Wright, and an agreed statements of facts—the answer adopting said agreed statement of facts, and setting up that the bill made no case entitling plaintiff to relief; that there was no

equity in the bill; that complainants had a complete remedy at law. (Transcript, p. 10.)

The case made by such pleadings and statement was as follows:

The Western Railway of Alabama is a corporation chartered under the general laws of the State of Alabama, owning and operating a railroad extending from Selma via Montgomery to West Point, in the State of Georgia. All of said road, except a quarter of a mile, lies in the State of Alabama. This quarter (1-4) of a mile lies within the State of Georgia, and was constructed under an Act of the General Assembly of Georgia, passed in the year 1837, authorizing the predecessor of said Western Railway of Alabama to build and operate said road in the State of Georgia; said Act being a public act, and being found in the published Acts of 1837, pages 201, 202. (Transcript, p. 11.)

This property, after some prior changes of ownership, was sold in 1875 under a mortgage foreclosure, and was purchased jointly by the Georgia Railroad and Banking Company and The Central Railroad and Banking Company of Georgia, two railroad corporations of the State of Georgia; such purchase being made by authority of a public act of the General Assembly of Georgia, authorizing said companies to make such purchase. See Acts of Georgia of 1875, pages 235, 236. (Transcript, p. 11.)

Said two last-named corporations held said railroad as tenants in common, and operated the same without further incorporating it, until a time subsequent to the 7th day of May, 1881. (Transcript, p. 11.)

On the 7th day of May, 1881, the Georgia Railroad and Banking Company entered into an indenture of lease with one William M. Wadley, whereby it leased to the said Wadley, or assigns, for the term of ninety-nine (99) years from the 1st day of April, 1881, all of its rights of transportation

and its railroads, describing the same therein, and also "all "the rights of ownership, management, control and use of the "Western Railroad of Alabama, which the (said Georgia Rail-"road and Banking Co.) now has, or is entitled to," &c. (Transcript, pp. 10, 20, 21.)

By said lease it was further provided that the said Georgia Railroad and Banking Company "will consent to the organi-"zation of the owners of the Western Railroad of Alabama "into a corporation; * * * * *provided*, the said incorporation "shall not impair the beneficial ownership of said railroad by "the (Georgia Railroad and Banking Co.)" (Transcript, p. 23.)

Subsequently, in 188—, in accordance with the stipulations of said lease, a charter was applied for, and a certificate of incorporation issued by the Secretary of State for the State of Alabama, conformably to its general law, incorporating the Western Railway of Alabama. To that corporation the Georgia Railroad and Banking Company, and the Central Railroad and Banking Company, conveyed the said Western Railroad of Alabama, extending from Selma, Ala., via Montgomery, to a connection with the Atlanta and West Point Railroad, in the city of West Point, Georgia, receiving from said new corporation thirty thousand (30,000) shares of its capital stock of one hundred ($100.00) dollars each, aggregating three million ($3,000,000) dollars; each of said corporations so conveying said railroad receiving fifteen thousand (15,000) of said shares. Said Western Railway of Alabama owns no property in the State of Georgia, except the small portion of railroad hereinbefore set out, located in the county of Troup, State of Georgia. (Transcript, pp. 11, 12.)

Said 15,000 shares of stock "were issued to and stand in "the name of the Georgia Railroad and Banking Company, "but an irrevocable power of attorney or proxy to vote the "same has at all times been issued and existed under said

"lease in favor of the lessees or assigns, or such person as "they might designate to vote said shares." (Transcript, p. 12.)

It was further agreed that, by different assignments of the lease, the Louisville and Nashville Railroad Company became the sole assign of said lease, and became the lessee of said leased property and interests described therein, in lieu of the said Wadley, and was accepted by the Georgia Railroad and Banking Company as such sole lessee, and after being so accepted, deposited one million ($1,000,000) dollars of securities acceptable to the Georgia Railroad and Banking Company, to secure the faithful performance of said lease according to the covenant made in said lease in respect to making such deposit. (Transcript, p. 10.)

For the covenant of said lease so requiring, see (Transcript, pp. 24, 25.)

Subsequently, the Atlantic Coast Line Railroad Company acquired a half interest in said lease from said Louisville and Nashville Railroad Company, and was accepted by said Georgia Railroad and Banking Company as a co-lessee with said Louisville and Nashville Railroad Company, and the appellees are now co-lessees of said lease, and hold the same as fully and to all intents and purposes as did the said William M. Wadley. (Transcript, pp. 10, 11.)

Neither the Georgia Railroad and Banking Company nor its lessees have at any time paid any taxes on the shares of stock of the Western Railway of Alabama, issued as aforesaid. (Transcript, p. 12.)

The Western Railway of Alabama has paid to the State of Alabama all State and county taxes which have been demanded of it by said State. (Transcript, p. 13.)

About the 25th day of May, 1901, the appellant specifically demanded of the Georgia Railroad and Banking Company that it pay taxes on said shares of stock for the year 1900, to the State of Georgia; which said sum so demanded amounts to between $7,000 and $8,000. (Transcript, p. 12.)

The blanks sent annually by the Comptroller-General to the Georgia Railroad and Banking Company to use in making tax returns contain, among others, the following questions, to wit: "Number stocks and bonds owned by the company, and value "of all property not enumerated, and value of tools."

In no other way than in furnishing these blanks did the Comptroller-General make demand for taxes upon said shares of stock, until about the 25th day of May, 1901, when he made the demand last above mentioned. (Transcript, pp. 13, 30.)

Under the Statutes of Georgia regulating railroad taxation, all taxes payable by railroads, whether State, county or municipal, are required to be assessed by the Comptroller-General of the State.

Code of Ga., vol. 1, *secs.* 780, 784, 785.
Railway Co. vs. *Wright,* 151 *U. S.* 471.

It further appears, "that whatever taxes are collectable "from said stock during the entire term of said lease are pay- "able by the lessees thereunder, or if the same are lawfully "collected from said Georgia Railroad and Banking Company "said lessees are liable to reimburse the same to said Georgia "Railroad and Banking Company, without in any way dimin- "ishing the rental which is payable by said lessees under said "lease." (Transcript, p. 12.)

It was also agreed "that stockholders in the Atlanta and

"West Point Railroad Company, the Georgia Railroad and "Banking Company, the Augusta and Savannah Railroad "Company, and of all corporations which pay taxes upon their "property do not return their shares of stock for taxation." (Transcript, p. 12.)

The bill averred that the railroad companies, complainants therein, the present respondents, were without legal remedy to resist the payment of said alleged taxes if so coerced, and would be without remedy unless granted relief in the present proceeding. That under the laws of Georgia such shares of stock were not liable to taxation, and that the petitioner, Wright, was proceeding without law, or color of law, in attempting to collect the same. That such attempted collection and the enforcement of such pretended taxes would take their property without due process of law, and deny to appellees the equal protection of the laws, in violation of the 14th amendment to the Constitution of the United States. That there was no law in the State of Georgia authorizing the taxation of railroad shares of stock in the hands of the owners thereof. That under such law shares of railroad stock are mere representations of the railroad property itself, and such property must be taxed where located in Georgia, and, where not so located, is not subject to be taxed by the State of Georgia.

That the taxation of said shares would be taxation by the State of Georgia of property located in the State of Alabama.

That the State of Georgia does not tax under its law shares issued by railroad corporations of the State, but recognizes the same as mere certificates of interest in the railroad property, which is itself taxed, and that there is no law of the State creating any other or different rule for railroad shares issued upon properties lying without the State. (Transcript, pp. 4, 5, 6.)

The bill prayed that the shares of stock be decreed to be not subject to taxation; that the Georgia Railroad and Banking Company be enjoined from returning the same for taxation or paying taxes thereon; that William A. Wright be enjoined from issuing any execution or taking any steps to collect said taxes, and be decreed to be without warrant or authority of law so to do. The prayer was also for general relief. (Transcript, p. 6.)

On the hearing the Court held that under the law of Georgia shares were but representations of the railroad property, and that foreign railroad shares were not subject to be taxed, and enjoined the defendants as prayed. (Transcript, pp. 10, 13, 17, 18.)

The said W. A. Wright, Comptroller-General, thereupon appealed to the United States Circuit Court of Appeals for the Fifth Circuit, filing the following:

ASSIGNMENT OF ERRORS.

That the Circuit Court erred in:

1st. Overruling the grounds of demurrer in the answer:
   (*a*) That there was no equity in the bill, nor case made for equitable relief.
   (*b*) That complainants were without sufficient interest to sue.

2d. Holding that the stock was not taxable in this State.

3d. Holding said shares a mere representative of the railroad property itself, and not taxable.

4th. Enjoining the appellant from undertaking to collect said alleged tax.

5th. Enjoining the Georgia Railroad and Banking Company from paying any tax on said stock. (Transcript, pp. 27, 28.)

After argument had in said Court of Appeals, the decree of the Circuit Court was affirmed. (Transcript, p. 31.)

Upon the petition of said W. A. Wright, Comptroller-General, the writ of certiorari was granted, issued to said Circuit Court of Appeals, and the record of said case sent up to this Court. (Transcript, p. 34.)

BRIEF OF ARGUMENT.

I.

Where a right is created by the State law in favor of its own citizens, the Federal Courts can enforce the same by appropriate remedies, at the instance of a citizen of another State.

"1. Whenever a citizen of a State can go into the courts "of a State to defend his property against the illegal acts of "its officers, a citizen of another State may invoke the juris- "diction of the Federal Courts to maintain a like defense. "A State can not tie up a citizen of another State having "property rights within its territory invaded by unauthorized "acts of its own officers, to suits for redress in its own courts. "Given a case where a suit can be maintained in the courts "of the State to protect property rights, a citizen of another "State may invoke the jurisdiction of the Federal Courts. "*Cowles* vs. *Mercer County*, 7 *Wall*, 118; *Lincoln County* vs. "*Lunning*, 133 *U. S.* 529; *Chicot County* vs. *Sherwood*, 148 *U.* "*S.* 529."

Reagan vs. *Farmers Loan & Trust Co.*, 154 *U. S.* 362, 392.

2. Under the practice and procedure in Georgia injunction is a proper remedy to prevent the assessment, or collection, of an illegal tax.

Where land is levied upon by the tax-collector of one county as being located therein, when the true boundary of the county shows it lies in the second county, "the tax-collector of the "other county may be restrained by injunction from collect- "ing the taxes which would be due to it were the tract in that "county, but which are not due because of its being in the "adjoining county."

Smith, tax-callector, vs. *Dees*, 92 *Ga.* 549.

Where the provisions of a city charter requiring tax-assessors to assess all realty according to its market value on the first day of a certain month, and also requiring the return of all personalty owned by the taxpayer on the 15th of that month, are enforced so as to levy a tax on the vendor of land, both as to the realty sold and as to the proceeds of sale in cash or notes, such enforcement of the city charter should be restrained by injunction.

"Having applied to the assessors, who refused her applica-"tion, and having applied to the mayor and council, who "failed and neglected to act upon her petition, she had no "other recourse against this illegality than to seek an injunc-"tion from a Court of Equity."

Sheibley vs. *Rome*, 107 *Ga.* 384, 385–6.

An injunction is an appropriate remedy to restrain the Comptroller-General from proceeding prematurely with the issuance of a tax execution against a railroad company.

Wright, Comptroller-General, vs. *Railroad*, 85 *Ga.* 649, 650.

"Where any ministerial officer of this State is attempting "to collect money out of a person, natural or artificial, under "the forms of law, but without any valid law to authorize the "process he uses and calls an execution for taxes, it is the "duty of the courts, in a proper case made, to arrest the pro-"ceedings in some of the modes known to the law, and afford "relief to the party justly complaining.

"Equity has jurisdiction to interfere in behalf of any person, "natural or artificial, entitled to relief on the following "grounds: (1) Where exactions are pressed in the form of "annual taxes, inconsistent with, and violative of, legal rights. "(2) Because the exactions might be repeated and wrong "multiplied."

Southwestern Railroad vs. *Wright, Comptroller General*, 68 *Ga.* 311, 320.

Where a tax has been illegally imposed, and is illegally in process of collection by the tax-collector of a county, an injunction should be granted.

S. F. & W. Ry. vs. *Morton et al.*, 71 *Ga.* 24, 25.

Where there is no authority of law for the collection of a tax, an injunction is an appropriate remedy to prevent collection.

State vs. *S. F. & W. Ry.*, 111 *Ga.* 803.

It is therefore apparent that the settled remedy in Georgia, and in the courts of that State, to prevent the collection of an illegal tax, where the officer has no authority to levy or collect the same, is in equity and by injunction.

The statutory remedy provided for meeting the levy of a railroad tax execution issued by the Comptroller-General is one known as an affidavit of illegality.

Code of Ga. of 1895, *vol. I., secs.* 782, 789.

The affidavit of illegality is in its essence an equitable proceeding to restrain the progress of an execution, and its complement in the courts of the United States is a proceeding in equity to restrain.

"Illegalities are equitable proceedings, at least in the nature of equitable proceedings."

Higgs vs. *Huson*, 8 *Ga.* 319.

Where there is no adequate and complete remedy on the law side of the courts of the United States, a party may sue on the equity side, even when a complete remedy is furnished by the law of the State in the State Courts.

Nat. Bk. of N. O. vs. *Baker*, 4 *Woods*, 74.

II.

Where the remedy at law is not so complete, or where a cloud upon the title might be produced, the remedy is in equity.

"Courts of Equity undoubtedly have jurisdiction to hear

"complaints of those who assert that their lands are about to "be assessed and subjected to liens by a Board of Commission "acting in pursuance to the provisions of a statute which has "been enacted under the forms of law, but which is uncon- "stitutional, and therefore does not avail to confer the powers "sought to be exercised. *Dows* vs. *Chicago*, 11 *Wall*, 108; "*Union Pac. Railway* vs. *Cheyenne*, 113 *U. S.* 516; *Ogden City* "vs. *Armstrong*, 168 *U. S.* 224; *Dillon's Mun. Corporations, vol.* "2, *sec.* 833, *4th ed.*"

Wilson vs. *Lambert*, 168 *U. S.* 611, 612.

In the case last cited the board was proceeding without any law (because an unconstitutional statute is as though there was no statute). In this case, as we shall show hereafter, the Comptroller-General is undertaking to proceed without any law, as the statutes of Georgia do not embrace shares of stock in railroad corporations, either within or without the State.

Nevertheless, in this case if the Comptroller-General should make an assessment of these taxes and issue an execution upon the same against the Georgia Railroad and Banking Company, and levy upon some of its property in the State and sell it, the issuance of such an execution would *prima facie* constitute a general lien upon all of its property.

Says the statute: "On failure to pay the taxes so assessed, "the Comptroller-General shall proceed to enforce the collec- "tion of the same in the manner provided by law for the en- "forcement of taxes against the other incorporated companies "before mentioned."

Code of 1895, *vol. I., Sec.* 781.

"If any corporation, company * * * * * * where "required to make their returns to the Comptroller-General, "shall fail to return the taxable property or specifics, or pay "annually the taxes for which they are liable to the State "Treasurer, the Comptroller-General shall issue against them "an execution for the amount of taxes due, according to law, "together with the costs and penalties."

Code of 1895, *vol. I., sec.* 874.

"The property returned or held at the time of giving in, or "after, is alway subject (to the lien of taxes). A sale of "property under any other process does not divest the lien of "the State for taxes."

Code of 1895, *vol. I., secs.* 883, 884.

"The deed or bill of sale (made under the tax execution) "shall be just as valid to the purchaser as if made under the "ordinary process of law issuing from the Superior Court."

Code of 1895, *vol.* I, *sec.* 913.

This section applies to sales under tax executions issued by the Comptroller-General.

Bedgood vs. *McLean*, 89 *Ga.* 793.

Were the Comptroller-General, therefore, to assess these taxes, and levy an execution for the same, and property to be sold thereunder, the purchaser's deed, with the Comptroller-General's execution, would constitute a good *prima facie* title, and it would be necessary to go into parol to show how the alleged tax originated, and on what property, in order to impeach the apparent validity of the tax execution as a lien clouding all of the leasehold estate of the complainants, or in order to impeach any deed which might be made under such execution, as constituting a cloud upon the title to such property so sold. In such case the remedy at law is not complete, and equity has jurisdiction.

Dows vs. *Chicago*, 11 *Wall*, 198.
Hannewinkle vs. *Georgetown*, 15 *Wall*, 547.
Ogden City vs. *Armstrong*, 168 *U. S.* 224, 238.

Again, in this case the matter would be further complicated by the fact that the Comptroller-General is proceeding against the lessor company, while the lessees are the real parties at interest, under the agreed statement of facts.

"Where the remedy at law is plain, equity will not interfere "if the remedy is also adequate and complete; but, if the "remedy at law is doubtful, the Court of Equity will retain the 'case, and if the proofs are satisfactory, will grant relief."

"Jurisdiction to a partial extent may exist at law; but, if the "remedy there is not adequate—that is, if the party cannot "attain at law the full justice of the case—he may, if he sees "fit, pursue his remedy in equity. Nor is the Court of Equity "closed to the party unless the remedy at law is complete, "and will secure to the party the whole right involved in a "manner as just and perfect as would be attained in a suit in "equity. 1 *Story's Eq. sec.* 33; *Ins. Co.* vs. *Bailey*, 13 *Wall*, "621."

Clements vs. *Macheboeuf et al.*, 92 *U. S.* 418.

III.

The appellees are vitally interested in the question of whether these alleged taxes can be lawfully assessed. They are the payees of all such demands.

1. The agreed statement of fact shows their interest in the matter. (Transcript, pp. 11, 12, 14.)

Again, the bill avers, and the answer does not deny, that a levy or sale to collect same, would be of the leased property, and would destroy or impair their enjoyment thereof.

Under the Georgia Code the party entitled to the use of property, such as the life tenant, tenant for years, etc., is the primary taxpayer.

Code of 1895, *vol. I., sec.* 778.

Where one has an interest in the subject-matter he can maintain such litigation.

2. But in this case the Georgia Railroad and Banking Company has consented to an incorporation subject alone to such

incorporation, not impairing the beneficial ownership of said Western Railroad by such Georgia Railroad and Banking Company. (Lease, Transcript, p. 27.)

The lessees are vested with "all the rights of ownership, "management, control and use of the Western Railroad of "Alabama, which the party of the first part (Ga. R. R. & Bgk. "Co.) now has or is entitled to." (Lease, Transcript, p. 24.)

We insist that this constitutes the lessees the owners of this stock, subject alone to protecting the beneficial ownership of said lessor after the expiration of said lease.

IV.

All property in Georgia, which is not exempt under the provisions of the Constitution of the State, must be taxed equally with all other property.

The Constitution of Georgia prescribes:

"All taxation shall be uniform upon the same class of sub- "jects, and *ad valorem* on all property subject to be taxed "within the territorial limits of the authority levying the tax, "and shall be levied and collected under general laws."

Constitution of Ga. of 1877, *Art.* 7, *sec.* 2, *par.* 1; *Civil Code, sec.* 5883.

The Supreme Court of Georgia has construed this Constitutional provision as follows:

"* * * Under the system of taxation prescribed by our "Constitution the property of all persons and corporations, "unless exempted, is not only to be taxed, but must be taxed "on the basis of value. Under its provisions, property of "every kind, real estate, money, choses in action, movables "are, as a rule, not only subject to tax, but, taking values as "a basis, subject to the same rate of tax; * * * and property "of all kinds is, by a proper interpretation of our statute "placed in one class as a subject of taxation."

Georgia B. & L. Asso. vs. *Savannah,* 109 *Ga.* 63, 67.

If, therefore, under the laws of Georgia, a share of stock is property, for the purposes of taxation, the Legislature can not exempt it from taxation.

"* * Any method of the taxation of property which is "not uniform and *ad valorem* is illegal and contrary to the "plain mandates of the law." (Citing Georgia cases.) "Par. "2, sec. 2, art. 7 of the Constitution declares what prop- "erty is exempt from taxation. These subjects are purely "religious, charitable or educational, and, except as named, "no property in this State is free from the burden of tax- "ation."

Ga. B. & L. Asso. vs. *Savannah*, 109 *Ga.* 63, 67, 68.

V.

The Constitution of Georgia prohibits the Legislature from classifying property for taxation. All property not named therein as exempt, is, by the Constitution constituted one class.

"If property is taxed, all of it must be taxed except that "exempted in the Constitution. The Legislature or munici- "pal authorities can make no exemption as to property; it "must be taxed, and taxed according to its value. Though "property is a subject of taxation, the Constitution treats it "as but one subject, and prescribes the rule of uniformity as "to it by saying that all of it subject to be taxed shall be "taxed *ad valorem*."

Mayor vs. *Weed*, 84 *Ga.* 683, 686.

This construction of the Constitution of Georgia is approved in subsequent cases. It abolishes the rule of former Constitution, which permitted legislative exemption and classfiication.

Ga. B. & L. Asso. vs. *Savannah*, 109 *Ga.* 63, 67, 68.

"Thus the only classification of property relatively to tax-
"ation, that is made or authorized, is into exempt property
"and property subject to be taxed."

Atlanta National Asso. vs. *Stewart, T. C.*, 109 *Ga.* 80, 97.

VI.

This is not a case involving the right of the Legislature to exempt certain classes of property from taxation while taxing others; nor does it present the question of the right of the Legislature to classify property for purposes of taxation.

This case differs from any other case involving the question of taxing stock, which has been before this Court.

It is in no way like the case of *Sturges* vs. *Carter*, 114 *U. S.* 511. In that case the Legislature of Ohio levied a tax upon all shares of stock, excepting certain specified kinds of stock, which it exempted from taxation, and the question involved was whether the shares in question fell within the tax or within the exemption. It was conceded that the Legislature had the power both to classify shares of stock and to exempt certain shares without exempting all, and under the doctrine that the exemption would be construed strictly, the Court held that the same did not cover the shares held by Sturges.

After discussing the facts of this branch of the case the Court says:

"The claim, therefore, of the plaintiff in error is to the ex-
"emption of a certain class of his property from taxation, but
"it has been repeatedly held by this Court that the exemption
"from taxation must be expressed in clear and unmistakable
"terms, and can not be shown by doubtful or ambiguous lan-
"guage." (Citing authorities.)

"The case, therefore, depends upon the construction of the
"statute. The Supreme Court of Ohio has decided that shares
"owned by a resident of Ohio in a foreign corporation, none of
"whose capital was taxed in Ohio, but all of it in the State
"where the corporation had its home, was taxable in Ohio.

"*Bradley* vs. *Bauder*, 36 *Ohio St.*, 28. The controversy on this "part of the case is therefore reduced to the question of "whether the Legislature has clearly and unmistakably ex-"pressed the purpose in the act under consideration, to exempt "from taxation shares in a foreign corporation owned by "residents of Ohio, when but a small part of the property of "the company was subject to taxation in Ohio."

Sturges vs. *Carter*, 114 *U. S.* 511, 521.

In this case there is no question of exemption. The Legislature is prohibited by the Constitution from exempting shares of stock in any corporation from taxation, if the same are taxable property. The Supreme Court of Georgia laying down the rule as to what is taxable property, in a controversy between one of the railroads of Georgia and the Comptroller-General of the State (the petitioner in certiorari here), which railroad owned certain stock in an Alabama Railroad Company, as well as certain shares of stock in railroads in Georgia, decided as follows:

> "(*a*) Stock in the company's own road, held by "itself, or in other roads in this State, whose char-"ters limit or exempt taxation thereon, and whose "income is taxed, is not liable; and stock held by "the company in railroads without the limits of this "State is not taxable here. Stock in a railroad is "really but so many shares of its property, and that "property is real estate, for the most part, at least, "and taxable by the State in which the road is "located."
>
> "(*b*) But bonds, notes and all other mere evi-"dences of the debt follow the *situs* of the creditor, "no matter where the debtor lives."
>
> *Wright, Comptroller-General*, vs. *Railroad Co.*, 64 *Ga.* 783, 799.

Therefore, there is no question of the power of the Legislature to exempt certain classes of shares and tax others, as it

must be conceded this can not be done, and the Supreme Court of the State has held that neither shares of railroads in the State, nor those representing railroads out of the State, are taxable property within the meaning of the tax laws.

Nor is this case at all like the case of *Kidd* vs. *Alabama* 188 *U. S.* 730. In that case the Code of Alabama exempted shares of stock in domestic railroads from taxation, and under the construction of the Alabama statute by her own Supreme Court did not exempt shares of stock in foreign railroads. The question before the Supreme Court of the United States was whether such classification and exemption on the part of the State of Alabama denied to the taxpayer the equal protection of the law. This Court held that there being no question as to the power of the Legislature of Alabama, to exempt domestic railway shares, or to classify different kinds of property, the action of the State of Alabama did not deny to the taxpayer the equal protection of the law.

The Court say:

"We need not repeat the commonplaces as to the large "latitude allowed to the States for classification upon any rea- "sonable basis."

"What is reasonable is a question of practical details into "which fiction can not enter."

Kidd vs. Alabama, 188 *U. S.* 730, 733.

This case is not before this Court solely to determine, as in the Alabama case, whether the taxpayer has been denied its rights under the Constitution of the United States, but is here for this Court to pass, as fully upon the true meaning of the tax laws of Georgia and the liability of the taxpayer to pay taxes thereunder on the stock in question, as would the State Supreme Court itself, subject alone to the rule of decision that the decisions of the Supreme Court of Georgia construing her tax laws and declaring her public policy, will be accepted as conclusive by this Court.

VII.

The effect of taxing shares of stock in the hands of stockholders, and the property of the corporation in its hands, however legal, is in fact double taxation. Every presumption is against the intention to so double tax.

1. "The same may be said of a tax on the property of a "corporation, and also on the capital which is invested in the "property. If the latter is taxed as property, this also is "double taxation. * * * * * When, for instance, the "money paid in as capital of a manufacturing corporation has "been invested in buildings and machinery, these are what "then represent the capital, and to tax the capital as valuable "property, distinct from that which then represents it, would "be to tax a mere shadow. It would be to make the shadow "stand for the substance, in order that it might be taxed, "when the subtance itself is taxed directly under its own "proper designation."

Cooley on Taxation (2 *ed.*), *p.* 225.

"The most objectionable feature of a tax levy on shares of "stock is that almost inevitably it operates to impose a double "tax on a part or all of the shareholders. Such double tax exists "where either the corporate realty, or personalty, or franchise, "or capital is taxed and a tax is also levied on the shares of "stock without any deduction for the former taxation. * * "* * * The injustice of such taxation, however, generally "prevents its occurrence. The courts also do their utmost to "prevent double taxation, and will construe a taxation statute "so as to avoid such a result, and sometimes even in opposi-"tion to the plain words of the statute itself."

Cook on Stock and Stockholders (3 *ed.*), *sec.* 567.

The Supreme Court of the United States, while recognizing the power of a State to tax the property of a corporation in

its hands, and the shares of the capital stock in the hands of the individual shareholders, say:

"It is no doubt within the power of a State when not re-"strained by constitutional limitations, to assess taxes upon "them in a way to subject the corporation or the stockholders "to double taxation. Double taxation is, however, never to "be presumed. Justice requires that the burden of govern-"ment shall, as far as is practicable, be laid equally on all, "and if property is taxed once in one way, it would, ordinarily, "be wrong to tax it again in another way, when the burden of "both taxes fall on the same person. Sometimes tax laws "have that effect, but if they do it is because the legislature "has unmistakably so enacted. All presumptions are against "such an imposition."

Tenn. vs. *Whitworth*, 117 *U. S.* 129, 137.

2. The argument of petitioner is, that, because the State might, by express legislative enactment, create shares of stock, which are but an intangible evidence of the interest in the corporate property, into such separate, distinct, taxable property, therefore it must follow that the State of Georgia has recognized and created shares of stock as taxable property, distinct from the property of the corporation of which they are the symbol.

We, however, insist most confidently that Georgia has done no such thing. On the contrary she has by the uniform decisions of her courts recognized that the property of a corporation and the shares of stock evidencing the interest of its members in such corporation are no more different values than the land which one of her citizens may own, and the deed which he may hold evidencing his ownership therein.

We further insist that corporate shares are of such a character that it is entirely competent for the State to recognize that they, and the property of which they are the representatives, constitute but one taxable subject, and that a failure to tax such shares, or a declaration that they are but symbols, and not taxable property, is not an exemption, but the mere

adoption of one of the two doctrines which prevail in regard to the true *status* and nature of shares of capital stock.

3. It is admitted that Georgia rightly recognizes that the property of her corporations located in the State and the shares of the stockholders therein are but one and the same value, and that she does not attempt to tax one where the other is taxed.

It is further conceded that such double taxation would be unjust, for the reason that where the property has paid its taxes, the shares are but the symbol thereof, and the essential value has already contributed to the public good.

Why are shares less a symbol, in the absence of legislation expressly providing otherwise, where the corporation lives and its property lies out of the State? If shares are a symbol of property, where they represent an interest in a Georgia corporation, it would seem that shares in a corporation which does its business in another State, derives its franchises from another State, holds its property in another State, when held in Georgia, are nothing but the symbol of property located in another State.

They do not in this last case, even derive franchise or business value from the laws of Georgia, or protection from her government. Therefore upon principle, in the absence of compelling authority, there would seem to be no reason why shares of corporations in the State should pay no taxes, and shares of like corporations chartered elsewhere should be taxed.

Cook on Stock and Stockholders (3 *ed.*), *sec.* 565.

VIII.

The State of Georgia has always declared the capital of a corporation and the shares of its stock to be one and the same thing for purposes of taxation, and further, that shares of stock in railroad corporations whose property is located out of the State are not themselves property within the State of Georgia or subject to taxation.

As early as 1832 it was held that where bank stock is taxed in the hands of the holder, the corporation should not be taxed upon the capital which that stock represents, and that no intention to do this should be drawn from a tax act unless by express words or necessary implication.

Bank of State of Georgia vs. *City of Savannah*, *Dudley's Reports*, 130.

The exact question raised in this case was decided twenty years ago by the Supreme Court of Georgia, and the decision has very recently been approved by that court.

It appears by the record of the original case, of file in the Supreme Court of Georgia, that the Southwestern Railroad Company by its return showed that it owned certain shares of stock in some railroad companies of Georgia, and certain shares of stock of a railroad company of the State of Alabama. The State claimed, among many other contentions, that the Southwestern Railroad Company should pay taxes on all of these shares of stock. The railroad company resisted this claim. On this contention the Supreme Court of Georgia decided :

"(*a*) Stock in the company's own road, held by itself, or in "other roads in this State, whose charters limit or exempt "taxation thereon, and whose income is taxed, is not liable ; "and stock held by the company in railroads without the "limits of this State is not taxable here. Stock in a railroad "is really but so many shares of its property, and that prop- "erty is real estate, for the most part at least, and taxable by "the State in which the road is located."

"(*b*) But bonds, notes, and all other mere evidences of debt "follow the *situs* of the creditor, no matter where the debtor "lives."

Wright, *Comptroller-General*, vs. *Railroad Co.*, 64 *Ga.*, 783, 799.

In another more recent case the Supreme Court of Georgia say on the status of stock as taxable property :

"There are, in general, four methods of taxing corporate "interests. These are: 1st, by a tax on the franchise; 2d, "on the capital stock; 3d, on the real estate and personal "property of the corporation; 4th, by a tax on the shares of "stock in the hands of the stockholders. *1 Cook on Stock, &c.* "(*3d ed.*), *sec.* 561. See also, *2. Redf. Rwy.*, 453, and au- "thorities cited. It is not incumbent on the taxing power to "impose a tax on each, but it may do so; and while, as a rule, "double taxation is properly not favored, whether it will be "imposed or not rests with the taxing power—originally the "Legislature. The decision in *Mayor of Macon* vs. *Macon* "*Construction Co.*, 94 *Ga.* 201, is not in conflict with the doc- "trine here announced."

Georgia B. & L. Asso. vs. *Savannah*, 109 *Ga.* 63, 70-1.

Since this case has been in this court, the Supreme Court of Georgia has reaffirmed this decision in the 64 Georgia Report, 783, above quoted.

"In *Wright* vs. *Southwestern Railroad Company*, 64 *Ga.* 799, Justice Jackson said: "Stock in a railroad is really but so "many shares of its property, and that property is real estate "for the most part at least, and taxable by the State in which "the road is located."

Peoples Nat'l Bk. vs. *Cleveland*, 117 *Ga.* 908, 915.

This fixes the public policy of Georgia and its election to treat shares of stock as mere representatives of property, and not as property itself, and, therefore, as not the subject-matter of taxation.

It will be observed, moreover, that the provision of the Constitution does not undertake to define *what is property within the territorial limits* of the authority levying the tax.

It undertakes to make no change in the decisions recognizing shares of stock not as property, but as mere evidences of an interest in the property of the corporation itself; so that the question at last is unaffected by the provision of the Constitution, and recurs; whether under the law of the State

of Georgia, as declared by her courts, shares of stock are necessarily property different from the property held by the corporation, or are, like a bill of lading, a warehouse receipt, or other symbol, mere representatives of such property.

We answer these questions in the language of the Supreme Court of Georgia above quoted:

"Stock in a railroad company is really but so many shares "of its property, and that property is real estate, for the most "part at least, and taxable by the State in which the road is "located."

Again, "stock * * * in railroads without the limits of this "State is not taxable here."

64 *Ga.* 799.

IX.

No statute has been passed by the State declaring shares of stock in foreign railroad companies property within the State of Georgia and levying any tax thereon.

1. The law claimed to tax this stock was the Tax Act of 1878, which contained certain questions to the taxpayer. These questions were:

"In addition to the questions now propounded to taxpayers "by the tax-receivers, questions shall be framed by the comp- "troller-general to reach all property upon which a tax is "imposed by this act, and especially the following questions."

The 30th question is as follows:

"How many shares of stock did you own on the day fixed "for the return of property for taxation issued by corpora- "tions located without the State?"

"31st. What was the gross nominal value thereof?"

"32d. What was the fair market value thereof?"

"33d. How many shares of stock did you own on the day "fixed for the return of property for taxation, issued by cor- "porations within the State, the capital stock of which or the

"property of which is not returned by such corporation for "taxation ?"

"34th. What was the gross par value thereof ?"

"35th. What was the fair market value thereof ?"

No tax is here levied—only information is sought.

A purpose to levy a tax is never presumed, it must be clearly expressed.

Desty on Taxation, p. 199, *sec.* 39.
Cooley on Taxation, p. 165.
Endlich on Interpretation of Stat., sec. 345.

"Statutes levying duties or taxes upon subjects or citizens "are to be construed most strongly against the government "and in favor of their subjects or citizens; and their pro- "visions are not to be extended by implication beyond the "clear import of the language used."

Mayor &c. of Savannah vs. *Hartridge,* 8 *Ga.* 23, 30.

If this act shows any intent, it shows an intent not to tax shares in domestic railroad corporations. It can not exempt these.

To hold this act as taxing foreign railroad shares as property, would make the Legislature declare shares *property* and then *exempt* domestic shares. Such an Act would be unconstitutional as exempting property.

Georgia B. & L. Asso. vs. *Savaunah,* 109 *Ga.* 63, 68 *and cases cited supra.*

"Laws which indirectly produce such exemption must be "equally inoperative. That can not be accomplished indirectly, "which the organic law declares shall not be done directly."

Huntington vs. *Worthen,* 120 *U. S.* 97, 101.

It could not constitutionally adopt the rule contrary to the

Supreme Court decision, and declare all railroad shares property and not evidences or interest alone, because as to domestic railroad shares it declares it does not propose to do this, or to tax them.

Virginia Coupon Cases, 114 *U. S.* 269, 305.

If it leaves the rule that shares are not property and then seeks to tax some, as the Legislature of Georgia can not classify *property* for taxation or exempt it, it discriminates. It denies the equal protection of the laws to the owners of certain shares of stock by taxing them, while leaving the owners of other shares of stock untaxed.

Travellers Ins. Co. vs. *Connecticut*, 185 *U. S.* 364.

County of Santa Clara vs. *Railroad Cos.*, 18 *Fed. R.* 385, 394, 395, 399, 401.

It would also violate the Georgia Constitution. Under that property can not be classified except as that constitutionally exempt and constitutionally taxable. If *shares* are property, then *all* are taxable.

If this act taxes those in foreign railroads and not in domestic, it does not tax uniformly or ad valorem all species of property subject to the tax (that is all property not exempt by the Constitution).

Georgia B. & L. Asso. vs. *Savannah*, 109 *Ga.* 63, 68, *and cases cited supra.*

If the questions seek only information so that it can be seen if there are any foreign shares which are in corporations whose assets are such that the shares are taxable, such as insurance and banking companies, and if it assesses no tax on shares of foreign corporations where like domestic shares are not property within the meaning of the tax laws, then it is constitutional. This construction of it must therefore be adopted.

"It will always be presumed that it is the intention of the "General Assembly to obey and not to violate the Constitu- "tions, when one of its acts is susceptible of two construc- "tions, one violative of the Constitution and the other in con- "sonance therewith, the latter construction must be adopted. "An act of the General Assembly will never be construed as "violative of the Constitution, unless its terms are such as to "absolutely demand such a construction. The propositions "thus stated are elementary rules of law."

Park vs. *Candler*, 113 *Ga.* 647, 667.

2. The other Statutes and Code sections cited by petitioner's counsel do not bear on this question.

The citation in petitioner's brief of section 16, par. 30–1–2 of the Act of 1898 as to what the agent of a non-resident should return for taxation, because it enumerates *stocks, inter alia* as property to be returned for taxation, does not help the contention of appellant.

This section does not impose any tax; it simply provides by whom taxes due from a non-resident can be returned. The mention of stocks means *such stocks* as a resident would have to pay on. It does not intend to tax *all* stocks. Stocks representing interests in fixed properties were not being aimed at. If so, why are not domestic railroads and factory stocks taxed? It is admitted that they are not, and should not be, whether owned by a resident or a non-resident, because *not taxable property.*

Counsel for petitioner has also cited the second section of the act passed by the Georgia Legislature at the session of 1884–5, which he claims indicates the intention of the Legislature to make stock of railroad companies incorporated without the State of Georgia, but held by citizens within the State, liable to taxation, when shares in like corporations created by the State of Georgia are recognized as non-taxable.

We submit that the act not only does nothing of the sort, but that it furnishes evidence of a different intent.

First. This section of the act provides that

"personal property shall be construed for the purposes "of taxation to include all goods * * * all stocks and "securities, whether in corporations within this State or "in other States, owned by citizens of this State, etc."

Distinguished counsel for appellant says that is declaratory of the general policy of the State, and of the legislative intent that all personal property shall be construed to include for purposes of taxation all "*stock in foreign corporations*" owned by citizens of this State.

We insist that it is *expressly declaratory that all stocks and securities of corporations in this State, or in any other States, stand upon exact equality of treatment*, towit: that such as, according to the decisions of the Supreme Court of Georgia theretofore made, represent fixed property, such as railroads, which properties are taxed where located, were not within the eye of the law property for taxation.

Wright, Comptroller-General vs. *Southwestern R. R.*, 64 *Ga.* 782, 799.

Had the purpose been otherwise the act would have read that "personal property shall be construed," etc., to include, etc., "all stocks and securities in corporations *in other States* owned by citizens of this State,"—but it expressly declined to thus discriminate.

Second. The Act in question furnishes evidence that it did not propose to include all stocks, and to change the ruling made in 64 Ga., above quoted, but merely to reach such stocks as do not fall within the class described in such decision.

The same act in section 1st thereof, in specifying the property to be enumerated to the tax-receiver, says:

"The amount of capital invested in stocks of com-
"panies other than such companies as are required to be
"returned by the president or other agents, either to the
"Tax-Receiver or the comptroller-general."

Acts of 1884–5, *pp.* 28, 29.

Third. If this act had any such meaning (which we deny), it is no longer the law of Georgia, and its repeal has been recognized.

In 1895 the Legislature of Georgia adopted a new Code. This Code was compiled under authority of an act of the Legislature, to be found in the preface of the 1st volume of the Code of Georgia of 1895, page xv, which provides that

"it shall be the duty and power of the Code commis-
"sioners to codify and arrange in condensed form the
"laws now in force in Georgia, from whatever source
"derived."

After this Code was prepared, it was adopted by an act of the Legislature, to be found in the same preface, page xix, by which the said Code so prepared was adopted and made of force as the Code of Georgia.

This Code does not contain the 2d section of the Act of 1884–5, quoted by counsel for appellant. It does contain the 1st section and the 3d section, which, as amended by a subsequent act, are to be found in volume 1, sections 833 and 834 of the Code.

Its omission is significant. It was not an oversight, as the codifiers had their attention upon the act.

Learned counsel say that it is in substance in the Code, and that if not in the Code it is still the law.

We think it is *in substance* in the Code. We think that it did not change the former law, and was recognized by the codifiers as not changing the previous law laid down by the Supreme Court, distinguishing what stock was returnable for taxation; but as merely directing attention to the return of stock, for fear lest such stocks as were taxable, *as not repre-*

senting fixed properties returned for taxation, might be omitted, and that the codifiers did not consider it necessary to encumber the Code with it.

If this is not the case, then in so far as this section of the Act of 1884–5 changed the pre-existing law, the codifiers evidently considered it in conflict with subsequent legislation, and omitted it, and the Legislature adopted the Code including therein the 1st and 3d sections of the Act of 1884–5, but omitting the 2d section.

Counsel for appellant have quoted authority to the effect that law omitted from the Code, but not inconsistent therewith, is notrepealed by the adoption of the Code.

The original Code of 1863 contained an express provision that such law should still remain of force, and such a provision was continued in the Code of Georgia for many years. It is noteworthy that no such provision is to be found in the Code of 1895, or in the Constitution of the State of Georgia, declaring what laws are of force in the State.

Code of Ga. of 1895, *Vol. I., Sec.* 1.
Code of Ga. of 1895, *Vol. II., Sec.* 5932.

But, conceding that such is still the rule, the deliberate omission of a section of an act from the Code is certainly high evidence that it was either not considered to be the law when the Code was adopted, or that its provisions did not alter or add to the law as defined in other sections of the Code.

Mitchell vs. *Railway Co.*, 111 *Ga.* 768, 769, 770.

The Code of Georgia shows that foreign stocks are not taxed by the provisions readopted in 1895, as to such taxation.

"Bonds, notes, or other obligations for money, on persons "in other States, or of other States, or *bonds of corporations* "*of other States,* and shipping, are the subject of return and "taxation in this State."

Code of 1895, *Vol. I., Sec.* 776.

The use of the words "bonds of corporations," without in-

cluding the word "stocks," is significant, especially when construed in the light of the above decision of the Supreme Court in regard to the non-taxable character of stock representing an interest in a foreign railroad, and the clause in said decision which provides that such bonds are taxable.

64 *Ga.* 799.

4th. None of the sections of the Code quoted as substantially embodying this second section of the Act of 1884–5 have any bearing whatever upon the question presented in this case.

Section 833 Vol. I., of the Code, is merely the codification of certain questions relating to taxpayers, and is drawn from section 1st of the Act of 1884–5, page 28 (margin page 8 being a misprint), as amended by the Act of 1886. It clearly can not be considered as codifying the 2d section of the Act of 1884–5, when it expressly codifies the 1st section of the act, and the amendment to said 1st section alone.

Section 2165 of Vol. II. of the Civil Code has no bearing whatever upon the question of whether stock in a foreign corporation is taxable property, nor can it be a codification of the 2d section of the Act of 1884–5, for the reason that it is a part of the general law for the incorporation of railroads in Georgia, enacted by the Legislature in 1892, and provides that shares of stock in railroads located in Georgia, chartered under her general law, shall be personal property. Nobody contends that the Legislature of Georgia ever intended attempting to make such shares taxable property where she collects a tax upon the railroads located in her midst. It is also a mere repetition of Code, section 3070.

Section 3070 of Vol. II. of the Civil Code, can not aid the question, as it is a section of the law which was in the original Code of 1863, and was in existence just as it now stands when the Supreme Court held in the case of *Wright, Comptroller-General*, vs. *Southwestern Railroad*, 64 *Ga.* 799, that stock in a railroad located out of the State was not property within the State of Georgia subject to taxation.

X.

It is conceded that Georgia does not, and should not tax shares of stock in domestic railroads. She can not exempt them, but recognizes that railroad shares are not taxable property.

"It is conceded by counsel for the Comptroller-General "that the State has not attempted to tax shares in domestic "corporations, and that it would be wrong for it to do so." (Transcript, pp. 16, 17.)

The agreed statement of fact states: "It is further agreed "that stockholders in the Atlanta & West Point Railroad Com-"pany, the Georgia Railroad and Banking Company, the Au-"gusta and Savannah Railroad Company and of all corpora-"tions which pay taxes upon their property do not return "their shares of stock for taxation." (Transcript, p.12.)

This is done under the authority of the ruling of her Supreme Court that a railroad share is but the evidence of an interest in property taxed where situated.

Wright, Comptroller-General vs. *R. R. Co.*, 64 *Ga.* 783, 799.

People's Natl. Bank vs. *Cleveland*, 117 *Ga.* 908, 915.

This same definition states as a necessary conclusion therefrom that:

"Stock held by the company in railroads without the limits "of this State is not taxable here."

Wright, Comptroller-General. vs. *R. R. Co.*, 64 *Ga.* 783, 799.

The State has not exempted and can not exempt these shares, if property, from taxation.

If shares held by the same person in a Georgia railroad

corporation are not property liable to taxation because mere evidences of an interest in the railroad and corporate properties held by the Georgia corporation, how can it be held that shares in a like corporation of Alabama are not equally property liable to taxation, and are not like evidences of an interest in the railroad and other corporate property located in Alabama, upon which property all taxes it is adjudged (Transcript p. 12) have been paid?

Let it never be forgotten the question is: Is a *railroad share* in Georgia taxable property?

The Georgia Supreme Court has said it is not.

Wright, Comptroller-General, vs.. *R. R. Co.*, 64 *Ga.* 783, 799.

People's Nat'l Bank vs. *Cleveland*, 117 *Ga.* 908, 915.

XI.

Where Constitutions prohibit exemptions, and require the uniform taxation of all property, provisions providing that shares of stock shall not be taxed where the property of the corporation is taxed, are valid, and where such Constitutions prohibit double taxation, are generally imperative.

If shares of stock are separate property from capital representing the same, held by the corporation, then of course it makes no difference where the corporation is located,—an exemption of such shares from taxation because the corporate property is taxed would violate a constitutional provision prohibiting the exemption of property. On the other hand, if such shares of stock can be regarded as mere symbols of property within the State in the hands of her own corporations, they can necessarily be regarded as symbolic of property without the State, and as therefore not representing property within the limits of the taxing power.

Mr. Thompson, in his work on corporations, recognizes the existence of a line of decisions which hold:

"Where a tax is laid upon the property of a corporation, "whether in the name of capital or in the form of a tax upon "the tangible property into which its capital has been trans- "muted—another tax assessed against the shareholders upon "the shares held by them of the capital stock of the corpora- "tion, is double taxation and not permissible."

2 *Thompson on Corporations, sec.* 2813.

The identity of the shares and of the capital of a corporation is recognized by the Federal government in its provisions regarding the taxing of national bank stock.

2 *Thompson on Corporations, sec.* 2814.

Under a constitution which provides for taxing the property of corporations, the same as individuals; and, further, that uniform laws shall be passed taxing investments in bonds, stocks, &c., it is held, that to tax both the stock in the hands of the shareholder and the property of the corporation is inconsistent, because unequal taxation.

Cleveland Trust Co. vs. *Lander*, 56 *N. E. Rep.* 1036, 1040.

Says the Supreme Court of Pennsylvania:

"Such taxation (viz.: on the capital and the shares in the "hands of the holders), notwithstanding the subtle distinction "of the court below, would be substantially double taxation. "Conceding the power of the Legislature to tax in this man- "ner, its exercise is never to be presumed. The intent to "impose double taxation must be clearly expressed."

Penna. Co. &c. vs. *Commonwealth*, 15 *Atlantic Rep.* 456, 458.

The Constitution of Indiana, section 1, article 10, directs that the Legislature shall provide by law for a uniform and equal rate of assessment and taxation. It also provides for the taxation of all property except certain property therein

excepted. Under such Constitution, the Supreme Court of Indiana has held that a provision prohibiting taxation of shares of capital stock where that which gives it its value has already been taxed in the hands of the corporation, is not an exemption, but the prohibition of double taxation.

Hyland vs. *Central Iron & Steel Co.*, 13 *L. R. A.* 515.

An act providing for taxing the property of a corporation, and providing that its shares of stock shall not be taxed, is not unconstitutional under a constitution providing that all property shall be taxed equally and prohibiting legislative exemptions. Such a provision "is not in fact an exemption, but "only a different mode of assessment of property."

Carroll vs. *Alsup et al.*, 64 *S. W. Rep.* 193.

See also to the same effect:

Lewiston Co. vs. *Asotin County*, 64 *Pac. Rep.* 544.
Foster vs. *Stevens*, 13 *L. R. A.* 166, 169.
Bank vs. *Nashua*, 46 *New Hampshire*, 389.
Sherman vs. *Kimball*, 54 *New Hampshire*, 406.

It may be of advantage to consider that the State of Alabama taxes railroad properties not upon the value of their property as so much material, but upon the full value of the railroad as a going concern.

Code of Alabama of 1896, *sec.* 3972.

XII.

The rule of property, or of taxation, established in a State by the decisions of her Courts, will be followed by the Federal Court in dealing with such property or taxation.

1. In this case the Supreme Court of Georgia has established as a rule of property, that shares of railroad stock represent the property of the corporation. That such property is the subject of taxation, where located, either within or with-

out the State, but not the shares, which are mere representatives thereof.

Railroad Co. vs. *Wright*, 64 *Ga.* 783, 799.

Where a rule of property is established by the State decisions, it will be followed by the Federal Courts.

Foster vs. *Elk Ford, &c. Co.*, 32 *C. C. A.* 560.
Buford vs. *Kerr*, 33 *C. C. A.* 166.
Warburton vs. *White*, 176 *U. S.* 484.

2. The decisions of the State Courts as to State taxation, where not impairing some right claimed under the Constitution of the United States, will be followed by the Federal Court.

Lewis vs. *Munsen*, 151 *U. S.* 545, 549.
Bardon vs. *Land & R. Imp. Co.*, 157 *U. S.* 327, 331.

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